Supreme Court, U.S.
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No. 98-1685

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

DR. GEORGE HARKER,
Petitioner,
vs.
UNIVERSITY PROFESSIONALS OF ILLINOIS, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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25PP

QUESTIONS PRESENTED

The proper issues for review are the following:

1. Did the District Court wholly abandon its judicial role in ruling that actions brought under 42 U.S.C. §§ 1983 and 1988 require state action?

2. Did the District Court wholly abandon its judicial role in ruling that actions brought under 42 U.S.C. §§ 1985, 1986 and 1988 require allegations of racial or class-based animus?

3. Did the District Court wholly abandon its judicial role in ruling that Petitioner's federal civil rights causes were barred by a two-year statute of limitations?

PARTIES TO THE PROCEEDING

The Petition accurately lists the parties to this proceeding.

University Professionals of Illinois, Local 4100, has no parent corporation nor wholly nor non-wholly owned subsidiary. University Professionals of Illinois, Local 4100, is a labor organization affiliated with the Illinois Federation of Teachers and the American Federation of Teachers.

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STATEMENT OF THE CASE

This cases arises from the termination of the Petitioner, George Harker ("Petitioner"), from his faculty position at Western Illinois University ("University"). After various arbitral and administrative proceedings surrounding Petitioner's termination, he filed a complaint in the United States District Court for the Central District of Illinois ("District Court"), on July 10, 1996. Respondents, and various other defendants, were named in that action. That complaint was dismissed without prejudice on December 12, 1996.

On April 21, 1997, Petitioner filed a second complaint against Respondents in the District Court. The second complaint was in three counts with 96 numbered paragraphs. Count I of that complaint asserted a cause of action based upon 42 U.S.C. §§ 1983, 1985, and 1986 and/or 1988.[1] In essence the count alleged a conspiracy against Petitioner by and between (a) the University's Board of Trustees, (b) University Professionals of Illinois, Local 4100 ("Union"), (c) the Illinois Educational Labor Relations Board; (d) ten current or former persons having administrative responsibilities at the University; (d) three Union officers; (f) two University faculty members; and (g) the attorneys representing the University and the Union. Counts II and III alleged pendant state law causes of action.

All Respondents moved to dismiss Petitioner's second complaint. After full briefing, on January 15, 1998, the District Court

[1] The second complaint is unclear as to whether Petitioner stated a cause under Section 1986 or 1988; however, Petitioner's brief to the Court of Appeals asserts a cause under Section 1986. Nevertheless, whichever cause was alleged, these Sections of Title 42 are merely counterparts to Petitioner's other causes under Sections 1983 and/or 1985, and are construed coextensively with those sections. *McCalden v. California Library Ass'n*, 955 F.2d 1214 (9th Cir. 1990), *cert. denied*, 112 S. Ct. 2306 (1990).

entered an order dismissing Petitioner's complaint with prejudice, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The District Court order is attached hereto as Appendix A.

Petitioner filed a Notice of Appeal on February 9, 1998. The United States Court of Appeals for the Seventh Circuit ("Court of Appeals"), after full briefing, issued an order on January 21, 1999, affirming the District Court. The Court of Appeals order is attached hereto as Appendix B.

This Brief in Opposition is filed on behalf of the following Respondents, hereinafter referred to as "Union Respondents," who were defendants in the case before the District Court: University Professionals of Illinois ("Union"), the labor organization representing faculty employees at the University; Mitchell Vogel, the Union's president; Richard Brewer, the Union's grievance chair; Maurine Magliocco, the Union's chapter chair; Gilbert A. Belles and Robert Holton, faculty members of the University; and Barbara J. Hillman, the Union's attorney. The present Brief in Opposition addresses those issues pertinent to the Union Respondents' involvement with this case.

REASONS FOR DENYING THE WRIT

The *pro se* Petition presently before this Court is part of a long line of litigation by Petitioner, George Harker. Its assertions are essentially fact bound, and have been adjudicated in numerous arbitral, administrative and judicial proceedings.

The Petition presents no important legal theory, nor does it assert that the decisions of federal or state courts are in conflict. The Petition claims only that the District Court's dismissal of Petitioner's lawsuit was so outside the accepted bounds of proper judicial action that this Court must intervene. This contention is false, as demonstrated by the Orders of the District Court and the

Court of Appeals. App. A and B. The District Court properly applied the jurisdictional and pleading requirements for causes brought under 42 U.S.C. §§ 1983, 1985, 1986 and 1988: Union Respondents are not state actors; Petitioner did not allege racial or class-based animus; and the statute of limitations had run for all causes. The District Court's dismissal was consonant with the law and facts. No basis exists for the issuance of a writ by this Court.[2]

A. The District Court followed the law in finding that the Union, its officers, members and attorney were not state actors.

Claims brought under 42 U.S.C. §§ 1983 and 1988 require that constitutional deprivations are committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 49 (1988). The District Court properly found that the Union, its officers, members and attorney were not state actors. App. A. The Petition does not point to facts overlooked or misconstrued by the District Court in finding that Union Respondents were not state actors. Rather, like Petitioner's second complaint, the Petition is composed only of conclusory statements asserting that Respondents acted under color of state law. The District Court made proper findings in light of Union Respondents' presumed status and the complete absence of contrary allegations by Petitioner.

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[2] This Brief in Opposition addresses only those points raised in the Petition pertinent to the Union Respondents' involvement with this case. However, as the District Court's order makes clear (App. A), there are any number of bases upon which Petitioner's second complaint could have been dismissed. Not the least of these reasons was improper service under Federal Rule of Civil Procedure 4.

B. The District Court properly determined that Petitioner's allegations under 42 U.S.C. § 1985, 1986 and 1988 were insufficient to state a claim.

Actions under 42 U.S.C. §§ 1985, 1986 and 1988 require racial or an otherwise class-based invidiously discriminatory animus behind a conspirator's action. *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971). No allegations regarding class-based invidious discrimination existed in Petitioner's second complaint. On this basis, the District Court found that Petitioner failed to state a claim under Sections 1985, 1986 and 1988.

The Petition now asserts that Petitioner's Section 1985 action was based upon animus toward women at Western Illinois University, and that such animus was articulated in the complaint. Pet. at 15. This assertion plainly misrepresents Petitioner's second complaint. Of 96 paragraphs, not a single one contains even a suggestion of gender-based animus by Union Respondents. In fact, the District Court's order (App. A) demonstrates that Petitioner initially argued that class-based discrimination was not a necessary element of a cause under Section 1985. The District Court's order demonstrates no departure from the pleading requirements for actions under 42 U.S.C. § 1985.

C. The District Court properly found that the statute of limitations barred all causes by Petitioner.

The statute of limitations for federal civil rights causes is determined by a state's general or residual personal injury statute. *Wilson v. Garcia*, 471 U.S. 261, 275 (1985); *Sanders v. Venture Stores, Inc.*, 56 F.3d 771, 775 n.2 (7th Cir. 1995). The Illinois statute of limitations for such actions is two years. Ill. Rev. Stat., 735 ILCS § 5/13-202 (1992). Petitioner was terminated in 1991, but filed his second complaint in April of 1997. Both the District Court and the Court of Appeals properly found that all of Petitioner's civil rights causes (Sections 1983, 1985, 1986 and

1988) were filed after the statute of limitations had run. Therefore, Petitioner's claims against all named Respondents were stale. None of the Petition's arguments adequately explain why Petitioner waited almost six years after the defining event upon which his causes were based to file a complaint. There was no abuse by the District Court.

D. Conclusion.

The orders of both the District Court and Court of Appeals (App. A and B) cogently demonstrate those courts' care in interpreting Petitioner's abstruse complaint. All claims and contentions by Petitioner were addressed, despite their frivolity. The District Court properly exercised its power in dismissing Petitioner's second complaint, and the Petition should be denied.

Respectfully submitted,

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APPENDIX A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

DR. GEORGE R. HARKER,
Plaintiff,
vs.
WESTERN ILLINOIS UNIVERSITY, *et al.*,
Defendants.

No. 97-1147

ORDER

The plaintiff, George Harker, has brought this civil rights action purportedly pursuant to 42 U.S.C. §§ 1983, 1985 and 1986. The plaintiff claims that the defendants, Western Illinois University, the Illinois Educational Labor Relations Board, and various individuals affiliated with the university and its labor union, conspired to discharge the plaintiff from his tenured teaching position for alleged violations of university policy when in reality he was being punished for "the nature of his course content and teaching style" [apparently the plaintiff advocates public nudity]. Although the termination process and related appeals lasted five years, the plaintiff maintains that he was denied a meaningful hearing or other due process. This matter is before the court for consideration of the various defendants' motions to dismiss. For the reasons stated in this order, the motions will be allowed and the case will be dismissed.

The court must first address the plaintiff's motion to disqualify Elizabeth Joffe and the firm of Cornfield and Feldman from representing any defendant. The motion will be denied. The law firm represented the Union, not the plaintiff, during the contract grievance procedure through which the plaintiff's termination was challenged. [The plaintiff is suing the union attorney who

represented him in the termination proceedings.] The court is unpersuaded that the plaintiff had an attorney-client relationship with the law firm of Cornfield and Feldman, *see English v. Iron Workers, Local 46,* 654 F.2d 473 (7th Cir. 1981); *see also Tisby v. Buffalo General Hosp., et al.,* 157 F.R.D. 157 (W.D.N.Y. 1994). In any event, Ms. Joffe did not join the firm until March 1, 1996. Disqualification is not warranted under the circumstances of this case. Elizabeth Joffe (and the firm of Cornfield and Feldman), as regular counsel for the union, its officers and members, will be permitted to continue representing them in this action.

Turning to the motions to dismiss, it is well established that *pro se* complaints are to be liberally construed. *Haines v. Kerner,* 404 U.S. 519 (1972), *reh'g denied,* 405 U.S. 948 (1972). *See also Tarkowski v. Robert Bartlett Realty Company,* 644 F.2d 1204 (7th Cir. 1980). They can be dismissed for failure to state a claim only if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Haines,* 404 U.S. at 521; *Gregory v. Nunn,* 895 F.2d 413, 414 (7th Cir. 1990).

When considering whether to dismiss a complaint for failure to state a claim upon which relief can be granted, the court takes the allegations in the complaint as true, viewing all facts—as well as any inferences reasonably drawn therefrom—in the light most favorable to the plaintiff. *Bethlehem Steel Corp. v. Bush,* 918 F.2d 1323, 1326 (7th Cir. 1990). Dismissal should be denied whenever it appears that a basis for federal jurisdiction in fact exists or may exist and can be stated by the plaintiff. *Tarkowski,* 644 F.2d at 1207, *quoting Littleton v. Berbling,* 468 F.2d 389 (7th Cir. 1972).

FACTS

The plaintiff was a tenured professor at Western Illinois University for twenty-one years. He was terminated by the

University on June 20 or 21, 1991, after an eight-month hearing process before a panel of five of his tenured peers at the university.

Following his discharge, the plaintiff brought numerous challenges pursuant to the terms of his collective bargaining agreement. The plaintiff filed for unemployment compensation, which was denied because he had been terminated "for cause." The plaintiff initiated two separate arbitration proceedings, both of which were decided against him. The plaintiff filed a claim before the Illinois Educational Labor Relations Board claiming unfair labor practices. The IELRB issued a decision adverse to the plaintiff. The plaintiff filed an appeal, which was also decided in favor of the university and affirmed his discharge.

The plaintiff has filed two civil rights actions relating to the above-referenced events. The plaintiff voluntarily withdrew the first lawsuit (*Harker v. Western Illinois University, et al.*, Case Number 96-1338) after the magistrate judge issued a report and recommendation finding that the case should be dismissed with prejudice.

The instant complaint lists a number of alleged procedural improprieties in both the pre-termination hearing and the ensuing grievance proceedings. The plaintiff contends that the defendants conspired against him during the drawn-out proceedings because the plaintiff is a "recognized authority," and outspoken advocate, of public nudity. The plaintiff claims violations of his First Amendment rights and his right to due process. The plaintiff seeks reinstatement and back pay, as well as compensatory and punitive damages.

DISCUSSION

First, the plaintiff has failed to serve the defendants properly. Rules 4(c) and (e) of the Federal Rules of Civil Procedure

dictate the requirements for service of the summons and complaint. Service by certified mail is not permissible. However, the court will not delay dismissal by requiring proper service since, irrespective of service problems, the complaint fails to state an actionable federal claim against the defendants.

To the extent that this lawsuit concerns the plaintiff's discharge from Western Illinois University, the complaint is time-barred. The Supreme Court has held that a state's general or residual personal injury statute of limitations should be applied in determining the time limitation for actions brought under 42 U.S.C. § 1983. *See Wilson v. Garcia*, 471 U.S. 261, 275 (1985); *see also Owens v. Okure*, 488 U.S. 235 (1989). In Illinois, the personal injury limitation period is two years. 735 ILCS § 5/13-202 (1994); *see also Farrell v. McDonough*, 966 F.2d 279, 282 (7th Cir. 1992), *cert denied*, 506 U.S. 1084 (1993).

In the instant case, any cause of action regarding the plaintiff's discharge accrued on June 21, 1991, when his employment was terminated. Because the plaintiff waited until April 21, 1997, to initiate this lawsuit,[1] his claims [whether they relate to wrongful discharge, discrimination, retaliatory discharge, intentional interference with business relationships, or any other grounds] are time-barred.

The plaintiff cannot extend the limitations period by labeling his termination "one particular event in a series of events that is still continuing." Nor has the plaintiff provided any authority to support his proposition that the limitations period "must run" from the date he finally exhausted administrative remedies. To the contrary, the Supreme Court has expressly rejected the notion

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[1] As noted above, the court (Hon. Joe Billy McDade) allowed the plaintiff's motion to dismiss without prejudice a previous lawsuit concerning the plaintiff's discharge, *Harker v. Western Illinois University, et al.*, Case Number 96-1338.

that post-deprivation proceedings toll the statute of limitations. *See Delaware State College v. Ricks*, 449 U.S. 250 (1980); *Chardon v. Fernandez*, 454 U.S. 6 (1981); *see also Kelly v. City of Chicago*, 4 F.3d 509, 511-12 (7th Cir. 1993). The plaintiff was "wronged"—and was aware that he had been wronged—when he was terminated.

In addition, the doctrine of *res judicata*, or claim preclusion, bars relitigation of a claim that a party raised or could have raised in a prior adjudication. The Supreme Court has held that agency adjudication of a factual matter can be *res judicata* in later proceedings. *United States v. Utah Construction & Mining Co.*, 384 U.S. 394, 422 (1966). The plaintiff has already challenged his termination through the lengthy university hearing and appeal process, and then by filing suit before the IELRB. The plaintiff cannot prolong the process by mounting a collateral attack against the termination proceedings under the guise of a dubious civil rights action.

Even assuming *arguendo* that this case is not barred by the statute of limitations or by claim preclusion, the plaintiff sues many individuals who are not state actors. In order to be liable under 42 U.S.C. § 1983, a defendant must have acted under color of state law in addition to having violated a constitutional right. *Papapetropoulous v. Milwaukee Transport Services, Inc.*, 795 F.2d 591, 595 (7th Cir. 1986); *Reichenberger v. Pritchard*, 660 F.2d 280, 284 (7th Cir. 1981). The plaintiff cannot sue a private labor union, its attorney and officers, or individual faculty members under civil rights statutes simply by claiming *ipse dixit* that they "acted under color of state law" or "hid under the color of law," without specifying the nature of the alleged state action. The mere fact that certain proceedings are governed by state law does not necessarily render the proceedings actionable under § 1983. *Accord, see Winterland Concessions Company v. Treala,* 735 F.2d 257, 262 (7th Cir. 1984).

Despite liberal pleading requirements, the plaintiff cannot constitutionalize his claims by making boilerplate allegations of a conspiracy between private persons and state officials. *Moore v. Marketplace Restaurant, Inc.,* 754 F.2d 1336, 1352-53 (7th Cir. 1985). The Seventh Circuit has specifically held that an unsupported allegation of conspiracy is insufficient to show that a union acted as a state instrumentality. *Leahy v. Board of Trustees of Cmnty Coll. Dist. No. 508,* 912 F.2d 917, 921-22 (7th Cir. 1980); *see also Storlazzi v. Bakery,* 894 F Supp. 494, 500-501 (D. Mass. 1995), *aff'd* 68 F.3d 455 (1995). In a report and recommendation dated October 18, 1996 in 96-1338, the magistrate judge concluded that the union was a private organization and that there was no state action despite the fact that certain members were state employees. The plaintiff cannot resuscitate his claims simply by crying conspiracy or by noting that the organization is governed by state labor law. The plaintiff has failed to articulate a colorable cause of action under § 1983.

The plaintiff likewise has no claim under Section 1985. The purpose of 42 U.S.C. § 1985 is to redress civil rights conspiracies based on class-based or racial animus. *Griffin v. Breckenridge,* 403 U.S. 88 (1971); *Bowman v. City of Franklin,* 980 F.2d 1104 (7th Cir. 1992). The plaintiff's arguments to the contrary, relying solely on the wording of the statute itself, ignore longstanding case law.

The plaintiff's claims against the union [and individuals affiliated with the union] essentially boil down to the plaintiff's assertion that he was not adequately represented. Public employers such as Western Illinois University are specifically excluded from suit in federal court under the Labor Management Relations Act that a union breached its duty of fair representation. 29 U.S.C. § 152(2). Such claims are within the exclusive jurisdiction of the Illinois Educational Labor Relations Board. *Board of Education of Community School District No. 1 v. Compton,* 123 Ill.2d 216 (1988); *Foley v. American Federation of State,*

County and Municipal Employees, 199 Ill. App.3d 6 (1990). The district court cannot hear such claims. *Jackson v. Temple University,* 721 F.2d 931, 933 (3rd Cir. 1983). In fact, the plaintiff already pursued that claim, which the IELRB considered and rejected.

As the court also advised the plaintiff in his previous lawsuit, any claims against Western Illinois University and the Illinois Educational Labor Relations Board are barred by the Eleventh Amendment. The Eleventh Amendment bars an action for damages in federal court against the state and state agencies. *Kroll v. Board of Trustees of the University of Illinois,* 934 F.2d 904, 907 (7th Cir. 1991), *cert. denied,* 502 U.S. 941 (1991). Such entities are not "persons" who may be sued for damages under 42 U.S.C. § 1983. *Will v. Michigan Dept. of State Police,* 491 U.S. 45 (1989).

In sum, it is plain that the plaintiff could not prove a set of facts which would entitle him to relief in federal court, even assuming that the court has jurisdiction to entertain the plaintiff's claims. *Conley v. Gibson,* 355 U.S. 41 (1957). Accordingly, the defendants' motions to dismiss the complaint will be granted. Because the plaintiff's claims are time-barred and/or are *res judicata* or not cognizable under 42 U.S.C. sec. 1983, he could not save his case by amendment. In light of the dismissal of the plaintiff's federal claims, his state tort claims will be dismissed as well. *United Mine Workers of America v. Gibbs,* 383 U.S. 715, 725 (1966); *Freedom From Religion Foundation, Inc. v. Zeilke,* 845 F.2d 1463, 1471 n. 4 (7th Cir. 1988); 28 U.S.C. § 1367(c)(3).

Finally, it should be noted that the plaintiff has already filed two lawsuits in this court relating to his termination, both patently without merit. The plaintiff has already caused the court and the defendants to expend considerable time and expense in responding to his groundless suits. The instant complaint will be

dismissed with prejudice, as the plaintiff is clearly trying to harass the defendants. Because the plaintiff is *pro se,* the court will decline the defendants' suggestion that the court levy sanctions. However, the court will not hesitate to impose sanctions in the future if the plaintiff continues to pursue non-meritorious, vexatious litigation.

IT IS THEREFORE ORDERED that the plaintiff's motion for disqualification of attorney (docket #34) is denied.

IT IS FURTHER ORDERED that the plaintiff's motion for reconsideration (docket #53) is allowed. The court has considered the plaintiff's reply brief (docket #47), notwithstanding the provisions of Local Rule 7.1(B).

IT IS FURTHER ORDERED that the defendants' motions to dismiss (docket ##4, 9, 35, 42, and 50) are allowed. The complaint is dismissed, with prejudice, pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6). The case is terminated. The defendants are awarded costs of suit.

IT IS FURTHER ORDERED that the plaintiff's motion for hearing (docket #54) is denied as moot.

Enter this 15th day of January, 1998.

/s/ MICHAEL M. MIHM

MICHAEL M. MIHM
Chief U.S. District Judge

APPENDIX B

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Submitted January 7, 1999*
January 21, 1999

Before

Hon. Kenneth F. Ripple, *Circuit Judge*
Hon. Daniel A. Manion, *Circuit Judge*
Hon. Michael S. Kanne, *Circuit Judge*

GEORGE R. HARKER,
Plaintiff-Appellant,

v.

UNIVERSITY PROFESSIONALS OF ILLINOIS, ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD, MARK T. DUNN, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Central District of Illinois

No. 97-1147

MICHAEL M. MIHM, *Chief Judge.*

No. 98-1318

ORDER

In 1991, George Harker was terminated from his tenured professorship in the Department of Recreation and Park Administration at Western Illinois University ("WIU"). Five years later, Harker began filing civil rights suits against WIU, individual

*After an examination of the briefs and record, we have concluded that oral argument is unnecessary, and the appeal is submitted on the briefs and record. *See* Fed. R. App. P. 34(a); Cir. R. 34(f).

officials and attorneys of WIU, the university's labor union (University Professionals of Illinois or "the union"), and the Illinois Educational Labor Relations Board (the "IELRB"). Harker claimed that the defendants had violated his constitutional rights to free speech and due process under the First and Fourteenth Amendments. The district court concluded that the Eleventh Amendment barred Harker's actions against WIU and the IELRB, and that Harker's other actions were time-barred. Harker appeals. Because the district court's conclusions were correct, we affirm.

At the date of his termination in 1991, Harker had been a faculty member at WIU for 21 years. In 1996, having exhausted lengthy and unsuccessful administrative grievance procedures before the IELRB, Harker filed an action in the district court under 42 U.S.C. §§ 1983, naming WIU as the defendant. He quickly sought to voluntarily dismiss his case without prejudice, a request that was granted by the court pursuant to Fed. R. Civ. P. 41(a)(2). In 1997, Harker filed another suit. In the new action, he sued the Board of Trustees of WIU, seventeen individuals affiliated with the university, the union, and the IELRB. Harker brought his First and Fourteenth Amendment claims under 42 U.S.C. §§ 1983, 1985(3) and 1986. He alleged that he had been terminated because WIU officials were unhappy with the fact that he was an authority in the field of public nudity (he is the author of a book on the subject), had discussed the topic in his course entitled "The Philosophy of Leisure," and had served as an expert witness in trials dealing with the issue. He further alleged that the university officials, the union and the IELRB had conspired to deny him due process during the termination proceedings and during the administrative grievance procedure. Harker sought punitive and monetary damages as well as reinstatement.

The district court determined that (1) the Eleventh Amendment barred Harker's claims against WIU and the IELRB; (2) the claims against WIU were also time-barred; (3) the

private individuals Harker had sued under § 1983 were not state actors; (4) Harker's claims against the union could be brought only before the IELRB; and (5) Harker's claims under § 1985 contained no allegation of a conspiracy based on class-based or racial animus. Concluding, in addition, that Harker was "clearly trying to harass the defendants," the court dismissed his suit with prejudice pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6).

On appeal, Harker renews the claims he made before the district court. We review *de novo* a district court's grant of a motion to dismiss under Rule 12(b)(6), "accepting the well-pleaded allegations in the complaint as true and drawing all reasonable inferences in favor of the plaintiff." *Strasburger v. Board of Educ., Hardin County Community Unit Sch. Dist. No. 1*, 143 F.3d 351, 359 (7th Cir. 1998). A 12(b)(6) dismissal "is proper only where the plaintiff can prove no set of facts that would entitle him to relief." *Mallet v. Wisconsin Division of Vocational Rehabilitation*, 130 F.3d 1245, 1248 (7th Cir. 1997). "Furthermore, we construe complaints drafted by pro se plaintiffs liberally." *Id.*

The district court ruled correctly that the Eleventh Amendment barred Harker's claims against WIU and the IELRB. We have already concluded that "Western Illinois University is the State of Illinois for purposes of the Eleventh Amendment." *Davidson v. Board of Governors of State Colleges and Univs. for Western Illinois Univ.*, 920 F.2d 441, 442 (7th Cir. 1990). *See also Quern v. Jordan*, 440 U.S. 332, 341 (1979) (noting that Congress did not intend "by the general language of § 1983 to override the traditional sovereign immunity of the States"). In 1996, WIU's Board of Governors was abolished, and all the rights, powers, duties, assets, outstanding contracts, agreements and bonds previously vested in it were transferred to the Board of Trustees. 110 ILCS 605/10, 690/35. Because the Board of Governors was an arm of the state, *Ellis v. Board of Governors*,

102 Ill.2d 387, 393 (Ill. 1984), the holding in *Davidson* also now applies to the Board of Trustees.

We turn next to the question whether the IELRB is also an arm of the state. Factors to be considered in determining whether an entity is an arm of the state include whether the state is the source of the entity's funding; whether the state is financially responsible for liabilities and obligations incurred by the entity; and whether the function performed by the entity is traditionally a state or local function. *See e.g., Lake County Estates, Inc. v. Tahoe Regional Planning Agency,* 440 U.S. 391, 400-02 (1979); *Benning v. Board of Regents of Regency Univs.,* 928 F. 2.d 775, 777 (7th Cir. 1991); *Kashani v. Purdue University,* 813 F.2d 843, 845 (7th Cir. 1987). It may be debatable whether the act which established the IELRB (Illinois Public Act 83-1014: "[a]n act to establish the right of educational employees to organize and bargain collectively, to define and resolve unfair practice disputes") defines the IELRB's function as a state rather than a local function. Any ambiguity regarding this matter, however, is resolved by the fact that the IELRB's members are appointed by the Governor of Illinois and paid by the State of Illinois. 115 ILCS 5/5(a), (b) and (c). The IELRB, of course, has no authority to levy taxes, but depends rather on the Illinois General Assembly to appropriate the funds necessary for its operation. Moreover, it receives no appropriation to pay awards to successful plaintiffs; any judgment against it would clearly have to be paid from the State's public funds. *See Benning,* 928 F.2d at 777 ("the critical inquiry is whether a judgment would deplete the state treasury"). Therefore the IELRB "is the State of Illinois for purposes of the Eleventh Amendment," *Davidson,* 920 F.2d at 442. Thus, the district court properly concluded that it had no jurisdiction over Harker's complaints against the Board of Trustees of WIU and the IELRB to the extent Harker was seeking damages from these state entities.

The Eleventh Amendment, however, does not apply to prospective suits for reinstatement brought against officials of WIU in their official capacity, and Harker reminds us that his suit against the members of the Board of Trustees is only for "injunctive" relief. *See Kashani,* 813 F.2d at 848. Although this may explain why Harker dismissed his initial complaint and brought a new one against seventeen individual defendants, Harker's claims against these officials are now time-barred. Because Illinois' statute of limitations for personal injury claims is two years, a two-year statute of limitations governs § 1983 claims in Illinois. *Ashafa v. City of Chicago,* 146 F.3d 459, 461 (7th Cir. 1998). The rule is the same for claims brought under §§ 1985(3) and 1986. *See Sanders v. Venture Stores, Inc.,* 56 F.3d 771, 775 n.2 (7th Cir. 1995); *Wilson v. Giesen,* 956 F.2d 738, 741 n.4 (7th Cir. 1992). Section 1983 claims "accrue when the plaintiff knows or should know that his or her constitutional rights have been violated." *Kelly v. City of Chicago,* 4 F.3d 509, 511 (7th Cir. 1993). In employment termination cases, the date of accrual is the date of the adverse employment decision. *Id.* at 512. Here, Harker's claim accrued at the latest in 1991, when he was informed that he had been terminated.

To be sure, the two-year period may be tolled if the plaintiff "does not have and cannot with due diligence obtain information essential to bringing a suit." *Anderson v. Board of Regents of the University of Wisconsin System,* 140 F.3d 704, 706 (7th Cir. 1998) (internal quotation omitted). Harker argues that he could not know that his rights had been violated until his grievance procedures came to an unsuccessful conclusion in 1996. But it is well settled that the pursuit of grievance procedures, "or some other method of collateral review of an employment decision, does not toll the statute of limitations." *Kelly,* 4 F.3d at 512 (quoting *Delaware State College v. Ricks,* 449 U.S. 250, 261 (1980)). *See also Chardon v. Fernandez,* 454 U.S. 6, 8 (1981) (applying rule stated in *Ricks* to § 1983 context).

Nonetheless, Harker appears to suggest, as an excuse for the untimeliness of the present cause, that state and administrative remedies must be exhausted prior to filing a § 1983 claim in federal court. The suggestion is untenable in light of the Supreme Court's decision in *Patsy v. Board of Regents of Florida,* 457 U.S. 496, 507 (1982), that a litigant is not required to exhaust state remedies before bringing suit under § 1983. "The existence of a state administrative remedy does not ordinarily foreclose resort to § 1983." *Wright v. City of Roanoke Redevelopment and Housing Authority,* 479 U.S. 418, 427 (1987) (citing *Patsy,* 457 U.S. at 516). Thus, under the *Patsy* doctrine, a plaintiff may bring a collateral attack on a state administrative procedure in federal court for violation of due process. *See Van Harken v. City of Chicago,* 103 F.3d 1346, 1349 (7th Cir. 1997). Therefore, Harker could and should have brought his § 1983 claims within two years of termination in 1991, and those claims are presently time-barred.

Harker also brought claims under §§ 1985(3) and 1986 against the union, alleging a conspiracy with the other defendants to deprive him of his federal rights and a knowing failure to prevent the accomplishment of this deprivation. With respect to these claims, we note that "mere allegations of...conspiracy do not demonstrate that the [union] acted under color of state law and are not sufficient to survive a motion to dismiss." *Fries v. Helsper,* 146 F.3d 452, 458 (7th Cir. 1998). In addition, Harker's complaint fails to allege any racial or other class-based animus, and thus fails to state a cause of action under § 1985(3). *See Bowman v. City of Franklin,* 980 F.2d 1104, 1109 (7th Cir. 1992). At any rate, Harker could and should also have brought his §§ 1985(3) and 1986 claims within the period defined by the two-year statute of limitations. *Sanders v. Venture Stores, Inc.,* 56 F.3d 771, 775 n.2 (7th Cir. 1995). While it is often difficult to discern the legal nature of Harker's claims, the district court properly observed that his claims against the union seem to boil

down to the assertion that the union's attorney inadequately represented him during the 1991 termination proceedings. Harker fails to point to any specific action of which he could not have had knowledge within two years of his termination, and which would tend even remotely to indicate that a conspiracy existed between the union and state officials. Harker "may not sit back and accumulate [an entire series of] discriminatory acts and sue on all [of them] within the statutory period applicable to the [most recent] one." *Moskowitz v. Trustees of Purdue University,* 5 F.3d 279, 282 (7th Cir. 1993). Thus, these claims should also have been dismissed as time-barred.

Finally, Harker also moved to disqualify the union's lawyers, arguing that they had a conflict of interest because they had represented him during his pre-termination proceedings. Because the court properly granted the motion to dismiss, the motion to disqualify counsel was moot. Therefore we need not reach the issue of whether the unions attorneys represented Harker during the arbitration proceedings, and if so, whether that representation was "substantially related" to the present litigation. *See Schiessle v. Stephens,* 717 F.2d 417, 420 (7th Cir. 1983).

We conclude that Harker's claims against WIU and the IELRB were properly dismissed as barred by the Eleventh Amendment, and that not only his § 1983 claims, but all of his other claims as well, should have been dismissed as barred by the two-year statute of limitations applicable to §§ 1983, 1985(3) and 1986.

Harker also brought two pendant state causes of action against all of the defendants: intentional interference with an employment relationship and retaliatory discharge. "[P]endent jurisdiction is a matter of discretion, not of plaintiff's right. It is well established that if federal claims are dismissed before trial, the federal district courts should generally dismiss the state law claims as well." *Vukadinovich v. Board of School Trustees of the*

Michigan City Area Schools, 978 F.2d 403, 415 (7th Cir. 1992). Therefore, the district court properly dismissed Harker's pendent state law claims as well. The district court's judgment is

AFFIRMED.